

1
2
3
4
5
6
7 IN RE REQUEST FOR INTERNATIONAL
8 JUDICIAL ASSISTANCE FROM THE
9 19TH CIVIL COURT OF FIRST
INSTANCE ISTANBUL, TURKEY IN
ELIF KARATAS V. CUMA ALI OZEVIN,

Case No. [22-mc-80279-JSC](#)

**ORDER RE: SECTION 1782
APPLICATION**

Re: Dkt. No. 1

12 In this civil action, the 19th Civil Court of First Instance, Istanbul, requests judicial
13 assistance from the U.S. Department of Justice to obtain non-content consumer information from
14 Meta Platforms, Inc. The United States Government's application for an order pursuant to 28
15 U.S.C. § 1972 is now pending before the Court. Upon consideration of the application and the
16 relevant legal authority, the Court GRANTS the Government's application.

PROCEDURAL BACKGROUND

18 On behalf of the 19th Civil Court of First Instance, Istanbul, the Turkish Ministry of
19 Justice requests that the U.S. Attorney's Office for the Northern District of California obtain
20 consumer information and documents from Meta. (Dkt. No. 1-1 at 1.) Specifically, the Turkish
21 court requests the following for its pending matter *Elif Karatas v. Cuma Ali Özevin*:

- 22 1. The identity of the owner of the @ali_ozevinnn Instagram account;
- 23 2. Whether the @ali_ozevinnn Instagram account is still active, and if not:
 - 24 a) Whether the ali_ozevinnn Instagram account has been used by others as of
February 26, 2021; and
 - 25 b) The IP addresses that were used to access the @ali_ozevinnn Instagram
account.

26 (Dkt. No. 1-1 at 1.) Further, the U.S. Attorney's Office requests the appointment of Assistant U.S.
27
28

1 Attorney J. Wesley Samples as Commissioner to obtain the requested information from Meta.
2 (Dkt. No. 1-3 at 1.) AUSA Samples notified Meta of the request and Meta does not object to the
3 proposed order. (Dkt. No. 1-2 at 1.)

4 **LEGAL STANDARD**

5 Section 1782(a) provides, in relevant part:

6 The district court of the district in which a person resides or is found
7 may order him to give his testimony or statement or to produce a
8 document or other thing for use in a proceeding in a foreign or
9 international tribunal, including criminal investigations conducted
10 before formal accusation. The order may be made pursuant to a letter
rogatory issued, or request made, by a foreign or international tribunal
or upon the application of any interested person and may direct that
the testimony or statement be given, or the document or other thing
be produced before a person appointed by the court.

11 28 U.S.C. § 1782(a). Under Section 1782, a district court may order the production of documents
12 or testimony for use in a foreign legal proceeding, unless the disclosure would violate a legal
13 privilege. *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 260 (2004). Parties
14 commonly file ex parte applications under Section 1782 “as parties will be given adequate notice
15 of any discovery taken pursuant to the request and will then have the opportunity to move to quash
16 the discovery or to participate in it.” *IPCom GMBH & Co. KG v. Apple Inc.*, 61 F. Supp. 3d 919,
17 922 (N.D. Cal. 2014) (quotation omitted); *see also In re Letters Rogatory from Tokyo Dist., Tokyo,*
18 *Japan*, 539 F.2d 1216, 1219 (9th Cir. 1976) (finding Letters Rogatory an acceptable method to
19 request discovery under Section 1782). A Section 1782 application must satisfy statutory
20 requirements. Even if the threshold requirements are met, however, a district court is not required
21 to grant an application and can consider discretionary factors. *Intel*, 542 U.S. at 264-66.

22 **DISCUSSION**

23 Here, the Turkish court satisfies the statutory requirements and the discretionary factors set
forth by the Supreme Court in *Intel*. 542 U.S. at 264-65. The application also satisfies the
24 requirements to appoint an AUSA as Commissioner to collect the requested discovery.
25

26 **A. Statutory Requirements**

27 A Section 1782 applicant must show:

28 (1) the person from whom the discovery is sought resides or is found

1 in the district of the district court where the application is made; (2)
2 the discovery is for use in a proceeding before a foreign or
3 international tribunal; and (3) the application is made by a foreign or
4 international tribunal or any interested person.

5 *Khrapunov v. Prosyankin*, 931 F.3d 922, 925 (9th Cir. 2019) (cleaned up).

6 Here, the Turkish Court satisfies all three statutory requirements. First, Meta is
7 headquartered in Menlo Park, CA, which is located in the Northern District of California. (Dkt.
8 No. 1-1 at 1.) Business entities are “found” in the judicial district they are incorporated or
9 headquartered. 28 U.S.C. § 1782(a); *In re Appl. of Qualcomm Inc.*, 162 F. Supp. 3d 1029, 1036
10 (N.D. Cal. 2016) (defendants headquartered in the Northern District of California and thus found
11 here). Second, the requested discovery is for use in a Turkish lawsuit before the 19th Civil
12 Court—*Elif Karatas v. Cuma Ali Özevin*. (Dkt. No. 1-2 at 1, 5.); *cf. Intel*, 542 U.S. at 258-59 (“a
13 formal proceeding in the foreign jurisdiction need not be currently pending, or even imminent”).
14 Lastly, the United States filed this application on behalf of the 19th Civil Court of First Instance,
15 Istanbul, a foreign tribunal. (Dkt. No. 1-2 at 4.)

16 B. Discretionary Factors

17 Federal district courts retain wide discretion to grant discovery under Section 1782. *See*
18 *Intel*, 542 U.S. at 264. In exercising its discretion, a court considers the following non-exhaustive
19 factors:

20 (1) whether the person from whom discovery is sought is a participant
21 in the foreign proceeding; (2) the nature of the foreign tribunal, the
22 character of the proceedings underway abroad, and the receptivity of
23 the foreign government or the court or agency abroad to U.S. federal
24 court judicial assistance; (3) whether the request conceals an attempt
25 to circumvent foreign proof-gathering restrictions or other policies of
26 a foreign country or the United States; and (4) whether the request is
27 unduly intrusive or burdensome.

28 *Id.* at 264-65. A district court’s discretion under Section 1782 must be exercised in light of the
statute’s twin aims: “providing efficient means of assistance to participants in international
litigation in our federal courts and encouraging foreign countries by example to provide similar
means of assistance to our courts.” *Application of Malev Hungarian Airlines*, 964 F.2d 97, 100
(2d Cir. 1992). The party seeking discovery need not establish that the information sought would
be discoverable under the foreign court’s law or that the U.S. would permit the discovery in an
analogous domestic proceeding. *See Intel*, 542 U.S. at 247, 261-63.

1 The Court finds good cause to exercise its discretion because the *Intel* factors weigh in
2 favor of granting the Turkish court’s application. The first factor generally weighs against
3 authorizing discovery if the person from whom it is sought is a participant in the foreign
4 proceeding because the “foreign tribunal has jurisdiction over those appearing before it and can
5 itself order them to produce evidence.” *Id.* at 264. Conversely, “nonparticipants in the foreign
6 proceeding may be outside the foreign tribunal’s jurisdictional reach; hence, their evidence,
7 available in the United States, may be unobtainable absent Section 1782(a) aid.” *Id.* Here, Meta
8 is not a litigant in the Turkish lawsuit. (Dkt. No. 1-2 at 4.) Further, the Turkish court likely
9 cannot obtain the requested discovery absent Section 1782 aid.

10 Second, that a Turkish court requests the information indicates it is receptive to assistance,
11 and that its request is not an attempt to circumvent proof-gathering restrictions in either the U.S. or
12 Turkey. (Dkt. No. 1-2 at 4.); *see In re: Request for Int’l Jud. Assistance From the Turkish*
13 *Ministry of Just.*, No. 16-MC-80108-JSC, 2016 WL 2957032, at *2 (N.D. Cal. May 23, 2016)
14 (finding that Turkey requesting the information made clear that the Turkish court was receptive to
15 this Court’s assistance). Moreover, the Turkish court requests the U.S. Department of Justice’s
16 assistance, which further demonstrates that the request is not an attempt to circumvent U.S. proof-
17 gathering restrictions.

18 Lastly, it does not appear the request is unduly intrusive or burdensome. The request is
19 currently limited to non-content information and Meta does not object. (Dkt. No. 1-1 at 1; Dkt.
20 No. 1-2 at 1.)

21 **C. Request to Appoint AUSA Samples as Commissioner**

22 “When it comes to requests directly from foreign courts, district courts typically handle
23 Section 1782 discovery requests in the context of an ex parte application for an order appointing a
24 commissioner to collect the information.” *In re Sungrove Co., Ltd.*, No. 22-MC-80225-JSC, 2022
25 WL 4468275, at *1 (N.D. Cal. Sept. 26, 2022) (citing *Tokyo Dist., Tokyo, Japan*, 539 F.2d at 1219
26 (holding that the subpoenaed parties may object and exercise due process rights by bringing
27 motions to quash the subpoenas after the court issues a Section 1782 order)); *see, e.g.*, *In re*
28 *Request for Int’l Judicial Assistance from the Nat’l Ct. Admin. of the Republic of Korea*, No. C15-

1 80069 LB, 2015 WL 1064790, at *2 (N.D. Cal. Mar. 11, 2015) (granting ex parte application for a
2 Section 1782 order); *In re Request for Int'l Judicial Assistance from the 16th Family Ct. of the*
3 *Supreme Ct. of Justice of the Fed. Dist.*, No. 14-mc-80083-JST, 2014 WL 1202545, at *1 (N.D.
4 Cal. Mar. 19, 2014) (same). Under Section 1782, the court-appointed commissioner can
5 “administer any necessary oath and take the testimony or statement.” 28 U.S.C. § 1782(a).

6 Here, the Court will appoint AUSA Samples as Commissioner, and thereby authorize him
7 to obtain the requested information from Meta on behalf of the Turkish court. Courts in this
8 district, and others within the Ninth Circuit, have appointed AUSAs as Commissioners and
9 authorized them to obtain requested discovery. *See Int'l Jud. Assistance From the Turkish*
10 *Ministry of Just.*, 2016 WL 2957032, at *2 (appointing AUSA Wendy M. Garbers as
11 Commissioner and authorizing her to obtain the requested non-content information from
12 Facebook); *see also In re Letter of Request from Loc. Ct. in Kusel, Germany*, No. 1:22-CV-01009-
13 CL, 2022 WL 5142753, at *4 (D. Or. Oct. 5, 2022); *In re Request for Jud. Assistance From*
14 *People's Ct. of Da Nang City in Vietnam in Matter of Dinh v. Nguyen*, No. 22-MC-80149-JST,
15 2022 WL 3327923, at *3 (N.D. Cal. Aug. 11, 2022).

16 CONCLUSION

17 For the reasons stated above, the Court GRANTS the Turkish court’s Section 1782
18 application and appoints Assistant U.S. Attorney J. Wesley Samples as Commissioner to obtain
19 information from Meta in accordance with the discovery request.

20 1. Upon receipt of the subpoena, Meta Platforms, Inc. shall promptly make a diligent
21 search for the non-content information described in § 2703(c)(2) of the Stored Communications
22 Act, 18 U.S.C. §§ 2701-2711, related to the @ali_ozevinn Instagram account, as requested by the
23 19th Civil Court of First Instance Istanbul, Turkey. This Order does not require Meta Platforms,
24 Inc. to disclose any information that would be inconsistent with its obligations under the federal
25 Stored Communications Act.

26 2. Within 30 calendar days from receipt of the subpoena and after providing notice to the
27 user associated with any identified Instagram account, Meta Platforms, Inc. shall produce the
28 information described in paragraph 1, to the extent it is available, along with a notarized

1 verification signed under penalty of perjury to AUSA Samples, unless the user files, within 14
2 calendar days from the date he or she receives the subpoena, an objection or a motion to quash in
3 this action, served on both Meta Platforms, Inc. and AUSA Samples. If there is such an objection
4 or motion to quash filed, Meta Platforms, Inc. need not produce the information until after the
5 Court rules on the issue.

6 3. This Order does not preclude the United States from filing an amended petition for a
7 further order authorizing an amended subpoena requesting additional information from Meta
8 Platforms, Inc. in the event the 19th Civil Court of First Instance Istanbul, Turkey, requests
9 additional information from Meta Platforms, Inc. after reviewing Meta Platforms, Inc.'s response
10 to the subpoena authorized by this Order.

11 4. This Order does not preclude Meta Platforms, Inc. from filing a motion to quash or
12 modify the subpoena under any applicable Federal Rule or statute.

13 **IT IS SO ORDERED.**

14 Dated: January 26, 2023

United States District Court
Northern District of California

15
16
17
18
19
20
21
22
23
24
25
26
27
28



JACQUELINE SCOTT CORLEY
United States District Judge